

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH K. THOMAS, III	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN MIDDLETON, INC., MAKERS	:	
OF BLACK & MILD CIGARS	:	NO. 99-2275

MEMORANDUM ORDER

Plaintiff is an inmate at Ware State Prison in Waycross, Georgia. He has asserted a claim against defendant pursuant to 42 U.S.C. § 1983.

Plaintiff alleges that he has suffered "extreme emotional and physical discomfort" from daily involuntary exposure to tobacco smoke including some from cigars manufactured by defendant. It appears from the complaint that although Ware is designated as a non-smoking facility, smoking is tolerated by prison authorities with whom plaintiff has filed a grievance. Plaintiff seeks \$38,500,000 in compensatory and punitive damages from defendant.

Defendant is a private corporation and not a state actor. It is not subject to suit under § 1983 for its conduct in manufacturing tobacco products. Moreover, the causal connection between the manufacture of defendant's product and plaintiff's forced exposure to it because of his incarceration in a facility where a smoking ban is ignored and his complaints have been unavailing is tenuous, to be charitable.

The real gravamen of plaintiff's claim appears to be that prison officials, who are state actors, have permitted his exposure to sufficiently high levels of tobacco smoke to pose an unreasonable risk of serious damage to his health and are doing so with deliberate indifference to that exposure. Such a claim may be asserted under § 1983. See Helling v. McKinney, 509 U.S. 25, 35 (1993).

In this case, however, such a claim must be filed in the Southern District of Georgia where the challenged conduct is occurring. This court has no jurisdiction over prison officials in Georgia and no authority to compel action on their part.

ACCORDINGLY, this day of May, 1999, **IT IS**
HEREBY ORDERED that plaintiff's Application to Proceed Without
Prepayment of Fees is **GRANTED** and, pursuant to 28 U.S.C.

§ 1915(e)(2)(B)(ii), the above action is **DISMISSED** without
prejudice to plaintiff to file any cognizable claim for
injunctive relief or damages against appropriate prison officials
in the Southern District of Georgia.

BY THE COURT:

JAY C. WALDMAN, J.